

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

First Appeals Nos.1040 of 1994 to 1080 of 1994

With

Cross Objections Nos.304 of 1999 to 339 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SHAMALBHAI D PATEL

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Appearance:

Mr.P.G.Desai, GP, in FA Nos.1040/94 to 1059/94 with  
Cross Objections Nos.304 to 321 of 1999:

Mr.R.C. Kodekar, AGP, in FA Nos.1060/94 to 1079/94 with  
Cross Objections Nos.322 to 339 of 1999:

MR Gaurang H. Bhat for the original claimants.

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CORAM : MR.JUSTICE M.H.KADRI and  
MR.JUSTICE J.R.VORA

Date of decision: \_\_\_\_/12/1999

COMMON CAV JUDGEMENT (Per : Kadri, J.)

1. First Appeals Nos. 1040 of 1994 to 1080 of 1994

are filed by the State of Gujarat under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated October 1, 1992, passed by the learned Second Extra Assistant Judge, Sabarkantha, at Himmatnagar, in Land Reference Cases Nos. 296 of 1989 to 336 of 1989.

2. Cross Objections Nos.304 of 1999 to 339 of 1999 are filed by the original claimants under Section 54 of the Act read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated October 1, 1992, passed by the learned Second Extra Assistant Judge, Sabarkantha, at Himmatnagar, in Land Reference Cases Nos. 296 of 1989 to 336 of 1989. In these appeals, the claimants claimed enhanced compensation at the rate of Rs.678 per Are for the irrigated lands and Rs.468 per Are for the non-irrigated lands.

3. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

4. Executive Engineer, Dharoi Store Division, Himatnagar, by his letter dated July 10, 1980, sent a proposal to acquire agricultural lands of village Roovach, Taluka Idar, District Sabarkantha, for the public purpose of 'Guhai Jalagar Yojna'. The said proposal was accepted by the Additional Collector (Irrigation), North and Central Gujarat, Gandhinagar, and a notification under Section 4(1) of the Act was published in the government gazette on May 27, 1982. The Land Acquisition Officer, after following usual procedure, had awarded compensation for acquired lands of village Roovach at the rate of Rs.6500 per Acre including solatium for the irrigated lands, Rs.4500 per Acre including solatium for the non-irrigated lands, and Rs.40 per Acre for Karabha land, by his award made on March 10, 1987. The claimants were of the opinion that the offer of compensation made by the Land Acquisition was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Sabarkantha, at Himatnagar, which were numbered as Land Reference Cases Nos. 296 of 1989 to 336 of 1989. In the reference applications, the claimants claimed compensation at the rate of Rs.1000 per Are for the irrigated lands and Rs.800 per Are for the non-irrigated lands.

5. Learned Extra Assistant Judge consolidated abovementioned reference cases and common evidence was led in Land Acquisition Case No.296 of 1989. The claimants, before the Reference Court, examined Talsibhai Becharbhai, claimant of Land Acquisition Case No.324 of 1999, at Exh.21. The claimants, in respect of their claim of wells, pipelines, construction, etc. examined Engineer, Mohmed Ibrahim Vali Mohmed, at Exh.183 and witnesses Majidbhai Ahmedbhai at Exh.206 and Mohmedyusuk Mohmad Jamal at Exh.210. The claimants produced documentary evidence such as 7/12 extracts at Exh.22 to 109, xerox copy of judgment of the Reference Court in Land Acquisition Case No.1072 of 1987 at Exh.110, price list of Agricultural Produce Market Committee, Himatnagar, at Exh.111, price of index of sale register at Exh.112 to 116, copy of judgment and order in Special Civil Application No.1492 of 1984 at Exh.117, copy of judgment and order in Special Civil Application No.5298 of 1989 at Exh.118, valuation report with regard to wells and structure existing on the agricultural lands at Exh.184 to 201, price list and rate of analysis of pipeline at Exh.204, 205, 207, 208, and 212. The acquiring body did not lead oral evidence but produced kabulatnama of the claimants at Exh.151 to 182. Before the Reference Court, the claimants claimed enhanced compensation of Rs.1000 per Are. The Reference Court, on over all appreciation of oral as well as documentary evidence, determined market value of the acquired lands at the rate of Rs.600 per Are for the irrigated lands and Rs.370 per Are for the non-irrigated lands. The Reference Court also awarded compensation for wells, pipeline and super-structure situated on the acquired lands, which have been challenged by the State of Gujarat by filing First Appeals Nos. 1040 of 1994 to 1080 of 1994. The claimants have filed Cross Objections Nos.304 of 1999 to 339 of 1999 for enhancement of compensation at the rate at the rate of Rs.678 per Are for irrigated lands and Rs.468 per Are for non-irrigated lands.

6. Mr. P.G. Desai, learned Government Pleader, assisted by Mr.R.C.Kodekar, appearing for the State of Gujarat, submitted that market value of the acquired lands determined by the Reference Court was excessive looking to the situation and fertility of the acquired lands. It is vehemently submitted by the learned counsel for the Government that the Reference Court erred in awarding compensation for the wells situated on acquired lands. It is stressed by the learned counsel for the Government that compensation awarded for pipeline and construction situated on acquired lands was excessive

and, therefore, the appeals should be allowed and the impugned judgment and order be quashed and set aside.

7. The learned counsel for the claimants, in Cross Objections Nos.304 of 1999 to 339 of 1999 has vehemently argued that the market value determined by the Reference Court with regard to acquired lands of village Roovach was inadequate in view of the judgment and order rendered by this Court (Coram: B.S. Kapadia & V.H. Bhairaviya, J.J.) in First Appeal Nos. 1119 to 1129 of 1990 decided on August 20, 1990. It is further claimed by the learned counsel for the claimants that the Division Bench of this Court (Coram: B.N. Kirpal C.J. & R.K. Abichandani, J.) in First Appeals Nos. 107 of 1994 to 113 of 1994, rendered on March 11, 1994, had confirmed determination of market value at the rate of Rs.678 per Are for the acquired lands of same village Roovach. The learned counsel for the claimants also placed reliance on the judgment of the Division Bench of this Court (Coram: B.N. Kirpal C.J. & A.N. Divecha, J.) in First Appeals No.24 of 1995, rendered on January 11, 1995, wherein determination of market value of the acquired lands of adjoining village Savali, was confirmed at the rate at the rate of Rs.678 per Are for the irrigated lands and Rs.468 per Are for the non-irrigated lands.

8. We have heard learned counsel for the parties at length. We have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals.

9. Submission of learned counsel for the Government that determination of market value of agricultural lands of village Roovach is excessive, deserves to be rejected. The Division Bench of this Court, in First Appeal Nos. 1119 to 1129 of 1990, had determined market value of the lands of adjoining village Savali, in respect of the notification published on May 27, 1982, at the rate of Rs.678 per Are for the irrigated lands and Rs.468 per Are for the non-irrigated lands. The claimants' witness, Becharbhai, Exh.21, had deposed before the Reference Court that all the agricultural lands were fertile and they used to take three crops in a year. He had deposed that boundaries of village Savali and village Roovach were touching each other and the lands of village Savali and village Roovach were comparable in all respects. The lands of village Savali came to be acquired for the same public purpose, i.e. Guhai Jalagar Yojna, by publication of notification issued under Section 4(1) of the Act on

the same date, i.e. May 27, 1982, and the Division Bench of this Court had confirmed determination of market value of the acquired lands of village Savali at the rate of Rs.678 per Are for the irrigated lands and Rs.468 per Are for the non-irrigated lands. The Division Bench of this Court, comprising of Honourable Chief Justice B.N. Kirpal and Honourable Mr. Justice R.K. Abichandani, in First Appeals Nos. 107 of 1994 to 113 of 1994, decided on March 11, 1994, had confirmed determination of market value at the rate of Rs.678 per Are for the acquired lands of same village Roovach which came to be acquired by notification issued under Section 4(1) of the Act on May 27, 1982. It is settled legal principle that earlier awards in respect of acquired lands of adjoining village or of the same village, if the lands of both are comparable in all respects, are relevant for determination of the market value of the agricultural lands acquired subsequently. (See: AIR 1993 Supreme Court 225, Pal Singh and others v. Union Territory of Chandigarh) It may be mentioned that determination of market value of the Division Bench of this Court with regard to acquired lands of village Savali and of the same village Roovach in respect of the issuance of notifications under Section 4(1) of the Act on the same day, at the rate of Rs.678 per Are for the irrigated lands and Rs.468 per Are for the non-irrigated lands, is relevant for the purpose of determining the market value of the acquired lands of the present appeals. The State cannot refuse to pay in respect of the lands acquired under the same notification compensation awarded to the lands owners whose similarly situated lands had been acquired under the same notification for the same purpose. In view of determination of market value of the earlier acquired lands of village Savali and of the same village Roovach, by the judgments of the Division Bench of this Court, as mentioned above, the appeals filed by the State of Gujarat with regard to determination of market value of the present acquired lands at the rate of Rs.600 per Are for the irrigated lands and Rs.370 per Are for the non-irrigated lands, deserve to be dismissed.

10. The Cross Objections Nos.304 of 1999 to 339 of 1999 filed by the original claimants claiming compensation of the acquired lands of village Roovach at the rate at the rate of Rs.678 per Are for the irrigated lands and Rs.468 per Are for the non-irrigated lands deserve to be allowed partly.

11. Submission of the learned counsel for the Government that the Reference Court erred in awarding compensation for the wells situated on the acquired lands

deserves to be accepted, in view of the decision of the Supreme Court in the case of O Janardhan Reddy & Others vs. The Spl. Dy. Collector, L.A. unit IV, LMD, Karimnagar, JT 1994 (6) SC 366. The Supreme Court held that when the agricultural land, the irrigation of which was possible from the water of the irrigation well, is acquired, the value of the land so acquired will have to be determined taking into consideration the irrigation facility it had from the well. In this situation the irrigation well in an acquired agricultural land cannot have a value apart from the value of the agricultural land itself. Therefore, First Appeals Nos.1040 of 1994 to 1080 of 1994 filed by the State of Gujarat deserve to be partly allowed, and judgment and award of the Reference Court in awarding compensation for wells situated on the acquired lands deserves to be modified by holding that the claimants shall not be entitled to compensation of wells situated on the acquired lands. The award of the compensation of pipelines and superstructure situated on the acquired lands does not call for any interference by this Court and the award of compensation with regard to pipeline and superstructure situated on the acquired lands is confirmed. These were the only contentions raised by the learned counsel for the State of Gujarat and the learned counsel for the original claimants.

12. As a result of foregoing discussion, we determine market value of the acquired lands of village Roovach at the rate of Rs.678 per Are for irrigated lands and Rs.468 per Are for non-irrigated lands. Compensation awarded for the wells situated on acquired lands is set aside, and the award of the Reference Court be modified accordingly. Compensation awarded for pipeline and superstructure situated on acquired lands is confirmed. First Appeals Nos.1040 of 1994 to 1080 of 1994 filed by the State of Gujarat are partly allowed to the extent that the respondents-claimants shall not be entitled to compensation for wells situated on acquired lands. The compensation awarded by the Reference Court in respect of pipeline and super-structure situated on acquired lands is confirmed.

13. Cross Objections Nos.304 of 1999 to 339 of 1999 filed by the claimants are partly allowed holding that the claimants shall be entitled to compensation for acquired lands of village Roovach at the rate of Rs.678 per Are for irrigated lands and Rs.468 per Are for non-irrigated lands. The claimants shall be entitled to

statutory benefits under Section 23(1-A) and 23(2) and interest under Section 28 of the Act, as awarded by the Reference Court and also on the additional amount of compensation awarded by this Court. There shall be no orders as to costs. The office is directed to draw decree in terms of this judgment.

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